

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

TO: Legislative Audit Committee Members

FROM: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits

DATE: October 2003

RE: Follow-up to Performance Audit:  
On-Premises Liquor Licensing Process (01P-06)

### **INTRODUCTION**

In October 2001, we presented our performance audit of the On-Premises Liquor Licensing Process to the Legislative Audit Committee. The primary audit objective was to evaluate the efficiency of the licensing process. The report made 11 recommendations that included 15 suggested changes to improve the process. Recommendations focused on streamlining the process, improving management controls, and making potential legislative changes. The following section summarizes the results of our follow-up.

### **SUMMARY OF FOLLOW-UP RESULTS**

The following table shows the status of the recommended changes made in the audit.

<b><u>Recommendation Status</u></b>	
Implemented	13
Partially Implemented	0
Not Implemented	2

As can be seen in the table, most of the recommendations have been implemented and only two have not been implemented. Overall, steps have been taken by the Department of Revenue (DOR) and the Department of Justice's Gambling Control Division (GCD) to streamline the on-premises liquor licensing process.

DOR information shows applications for the on-premises liquor-licensing process currently takes an average of approximately 132 days. This compares to an average of 193 days during the audit. This improvement is due to statutory changes related to the process, adoption of new

Administrative Rules and policies and procedures, and better communication between DOR and GCD in processing applications.

Liquor industry officials indicated the process has progressed and on-premises liquor licenses are processed in a timelier fashion. However, they also believe there are still a few issues to be worked out to further improve the process. Specifically, they believe some “meshing” of liquor and gambling statutes and Administrative Rules are still needed to continue to make the process more efficient. For example, they indicated minor licensing changes, such as dropping names from liquor licenses, is relatively easy with Administrative Rules established by the DOR. However, dropping names from gambling licenses is more difficult for gambling operators and they must go through the entire GCD application review process to get the name off the license.

The following sections provide background information on the on-premises liquor licensing process and conclusions made during our audit. We also outline each report recommendation, its implementation status, and steps taken by the DOR and GCD to implement the recommendations.

### **BACKGROUND: LIQUOR LICENSING PROCESS**

There are two types of retail liquor sales: off-premises consumption and on-premises consumption. Establishments that serve alcohol on-site constitute a majority of the licensing workload. On-premises liquor licenses allow alcoholic beverages to be consumed at the location where the beverage is purchased. The licensing process involves both the DOR and the GCD. The DOR is responsible for administering the Montana Alcoholic Beverage Code and managing the liquor licensing function. The GCD is responsible for both liquor and gambling-related investigative services. This includes investigative work to determine whether applicants and premises meet statutory licensing requirements. Combined, the two agencies spend over \$1 million each year on liquor licensing and regulation.

The majority of on-premises liquor licenses are issued to bars, taverns, and restaurants. However, licenses are also issued to allow on-premises consumption at other establishments such as airports, resorts, golf courses, and veteran and fraternal organizations. There are three basic types of on-premises licenses that are issued. These include:

- All-beverage license – This license allows the sale and consumption of liquor, beer, and wine at the licensed location. A license holder can offer gambling if they qualify.
- Beer license – This license allows consumption of beer at the location. Qualifying businesses can also purchase a wine amendment so wine may be sold and consumed. License holders may offer gambling (if they qualify) unless it is a new beer license approved within a city quota area after October 1, 1997.
- Restaurant Beer and Wine (RBW) license – This license allows restaurants to sell beer and wine to patrons for on-premises consumption. Gambling cannot be offered with this license.

State law establishes the maximum number of on-premises liquor licenses that can be issued. The liquor license “quota” is based on the population within each quota area (cities and counties) and limits the number of all-beverage licenses that can be issued in these areas. Beer and RBW licenses are only subject to the quota within city limits and five miles surrounding the city limits. Since the quota system limits the number of licenses that can be issued, it is common for the DOR to receive more applications than available licenses. In these cases, the DOR uses a lottery drawing to determine which applicants can apply for a license. State law considers receiving a license a privilege and therefore establishes several statutory qualifications to receive a license.

### **Audit Conclusions**

The audit report presented several conclusions related to the on-premises liquor licensing process. These are outlined below:

- ? *The on-premises liquor licensing process takes an average of 193 days.* This delay was due to several factors including coordination problems between DOR and GCD, duplication of efforts between DOR in processing applications, DOR requesting additional information from applicants, and DOR waiting for local officials to give final approval on whether buildings meet building, health and fire codes, and resolution of local protests to issuance of the liquor license.
- ? *The on-premises liquor licensing process causes applicants to submit duplicate paperwork and results in duplication of effort.* We found applicants were required to provide essentially the same supporting documentation to DOR and GCD when applying for both liquor and gambling licenses.
- ? *The on-premises liquor licensing process negatively impacts businesses by increasing business costs and/or causing lost business revenues.* Gambling licenses could not be approved until liquor licenses were approved. Delays in liquor license approval resulted in over \$207,600 in lost gambling revenues for 13 businesses in our audit sample.

### **Recommendation #1**

**We recommend the Department of Revenue seek legislation to eliminate in-state residency as a requirement for all-beverage, beer, and beer/wine on-premise consumption licenses.**

### **Status**

*Not implemented.* The DOR is party to a lawsuit challenging the constitutionality of the residency requirement to own a Montana on-premises all-beverage or beer license. The Attorney General is representing the state in the lawsuit. Because of the pending lawsuit and the Attorney General’s belief the residency requirement is constitutional, the department did not seek legislation during the 2003 Legislative Session. A trial is expected sometime in 2004.

### **Recommendation #2**

**We recommend the Department of Revenue seek legislation to allow for an expedited process for minor licensing changes.**

### **Status**

*Not implemented.* For some types of minor licensing changes, the DOR has always had a process in place to allow a “paper change” without submitting an application. For example, if there is a death of one of the licensees the DOR only needs a copy of the death certificate to remove the name from the license. However, the department did not seek legislation to allow for an expedited process for other relatively minor licensing changes, such as moving a business to a new location within the same town. Applications must still be submitted and reviewed for these kinds of changes. Senate Bill (SB) 40 was passed by the 2003 Legislature establishing a process to centralize a large portion of the application review process within GCD. This bill also encouraged further coordination between the DOR and the GCD to reduce duplication in the application review process. These changes were accomplished by establishing a single application for both liquor and gambling licenses and centralizing most application review responsibilities within the GCD for both licenses.

The DOR believed SB 40 would make the entire on-premises licensing process timelier and benefit all applicants, including those submitting applications for minor licensing changes. DOR data shows licensing timeframes have improved since the audit. The changes made to the licensing process generally meet the intent of this recommendation and have helped reduce the time it takes to process all applications. However, we still believe there is potential for further streamlining the liquor licensing process by eliminating the need for license holders to go through the application review process for some minor license changes.

### **Recommendation #3**

**We recommend the Department of Revenue strengthen management and staffing controls by:**

- A. Assessing the capabilities of liquor licensing staff to determine potential position changes and/or training needs.**
- B. Establishing relevant staff performance measures to assure reviews of liquor license applications are completed in a timely manner.**
- C. Requiring management staff to monitor staff adherence to performance measures.**

### **Status**

*A, B, and C are implemented.* Shortly after the audit, the department evaluated the skills of its staff and made staffing changes as necessary. The department also implemented several management and staffing controls to improve its monitoring over the liquor licensing process. These controls include establishing performance measures for approving applications, weekly meetings between management and staff to discuss applications, management review of applications, and periodic staff training on various licensing issues.

### **Recommendation #4**

**We recommend the Department of Revenue establish electronic system controls. This should include re-designing needed information and assuring data accuracy to provide better information to staff and assist in staff supervision.**

### **Status**

*Implemented.* This recommendation was implemented in conjunction with improvements in management and staffing controls. Databases have been developed to help management and staff track the status of applications. Licensing staff is required to immediately update an application's progress in the database. Management reviews database information on a weekly basis to ensure information is accurate, track the progress of applications, and ensure staff compliance with performance standards. If management finds information missing in the database, they talk to the staff member processing the application to determine if there is a problem with the application and to get the information into the database. The DOR also receives information from the GCD related to applications so they know when GCD's review of the application will be completed. In addition, the DOR and GCD are in the process of developing a joint licensing database so they can share information electronically instead of manually.

### **Recommendation #5**

**We recommend the Department of Revenue improve the liquor lottery process by:**

- A. Establishing formal liquor lottery procedures.**
- B. Changing Administrative Rules to ensure licenses are issued on a first come, first served basis for the last available liquor license.**
- C. Establishing specific lottery processing timelines in Administrative Rules.**

### **Status**

*A, B, and C are implemented.* Formal liquor lottery drawing policies and procedures were developed describing the method for conducting the drawing and outlining the duties of the officials conducting the drawing. The DOR also clarified several of its Administrative Rules related to the lottery process. For example, ARM 42.12.131 was changed to require applications be processed on a first come, first served basis which helped eliminate delays in conducting the lottery (and subsequently, shortened the entire licensing process). ARM 42.12.412 also established timelines for the lottery, requiring the lottery be completed within 30 days after applications were due to the department. Changes to Administrative rules also reduced the timeframe (from 30 days to 10 days) applications can be submitted to the department after notification a liquor license is available in a quota area.

### **Recommendation #6**

**We recommend the Department of Revenue and the Department of Justice periodically train liquor licensing staff on procedures related to confidential information obtained during the liquor licensing process.**

### **Status**

*Implemented.* DOR and GCD held numerous joint training sessions. For example, licensing staff was provided training related to confidential information. In addition, all licensing files were reviewed and purged of any confidential information they contained.

#### **Recommendation #7**

**We recommend the Department of Revenue make updating quota statistics on liquor license availability a priority.**

#### **Status**

*Implemented.* The DOR is using the U.S. Census Bureau website to obtain updated population estimates so they can update liquor license quota statistics in a more timely manner. This provides for quicker access to the information when it is available. When the population estimates are obtained, quota statistics are updated within a few days of receipt from the Census Bureau.

#### **Recommendation #8**

**We recommend the Department of Revenue develop and clarify Administrative Rules that reflect clear, consistent procedures for staff and licensees for RBW license fees and refunds.**

#### **Status**

*Implemented.* New Administrative Rules for RBW fees were approved in January 2003. Processing fees for RBW licenses were included into ARM 42.12.111 and refunds for these fees were clarified in ARM 42.12.405.

#### **Recommendation #9**

**We recommend the Department of Revenue clarify if lottery applicants applying for RBW licenses should be awarded preference points for previous unsuccessful all-beverage and beer license lottery drawings.**

#### **Status**

*Implemented.* The DOR adopted an administrative rule that clarifies lottery preference points for RBW licenses. ARM 42.12.401 defines RBW licenses preference points, which has helped eliminate confusion during the liquor lottery process. RBW lottery applicants are awarded preference points if a restaurant has been in existence for at least one year prior to the lottery application deadline or if applicants were unsuccessful in a previous RBW lottery.

#### **Recommendation #10**

**We recommend the Department of Revenue seek legislation on whether liquor license applicants should be allowed to submit multiple applications for liquor lottery drawings.**

#### **Status**

*Implemented.* The department was able to clarify this issue through Administrative Rule instead of seeking legislation. ARM 42.12.404 states, "only one lottery application per person will be accepted." Person is now defined as any individual, firm, partnership, limited liability company, corporation, or association.

### **Recommendation #11**

**We recommend the Department of Revenue and Gambling Control Division determine whether additional streamlining such as consolidating all liquor license functions within on agency is feasible.**

### **Status**

*Implemented.* The DOR and GCD held numerous meetings to determine how the liquor licensing functions could best be streamlined. These discussions lead to development of a combined liquor license and gambling application. The goal of this application was to “synchronize” the beginning of the application process for both licenses, eliminate the need for applicants to provide duplicate information to DOR and GCD, and shorten the timeframe for review and approval of on-premises license applications. In order to do this, one agency would need to receive the application and any corresponding documentation.

The 2003 Legislature passed SB 40 allowing the GCD to receive and process the combined on-premises liquor and gambling application. This legislation also placed the responsibility within GCD to complete investigations for both liquor and gambling license applications and makes the division the central point of contact for applicants. All applications and corresponding documentation are submitted to GCD for review. If additional information is needed regarding the liquor or gambling license application, it is provided to and reviewed by GCD personnel. DOR is still statutorily responsible for Montana’s Alcoholic Beverage Code, so they continue to have approval authority for liquor licenses. Therefore, once GCD completes its investigation they notify DOR officials who make the final licensing decision. Based on our follow-up work, the new process has eliminated the need for applicants to complete two different applications and submit the same documentation to two different state agencies for liquor and gambling licenses.

Based on DOR information we noted timeframes for the on-premises licensing process have improved. Our original audit noted the on-premises liquor licensing process took an average of 193 days. During fiscal year 2001-02, it took an average of 143 days to process applications. During fiscal year 2002-03 it took an average of 132 days. DOR and GCD officials attribute this improvement to several changes including the combined application, reduced duplication and better coordination between DOR and GCD, and staff training.